

*REMARKS/ARGUMENTS**Restriction Requirement*

The Official Action mailed January 11, 2007 asserts that the application contains claims directed to more than one species of generic invention because they are not so linked so as to form a single general inventive concept under PCT Rule 13.1.

It appears that the Office Action requires an election of species between alleged species of polymeric membranes, and between alleged species of polymeric supports.

ELECTION OF GROUP AND SPECIES WITH TRAVERSE

In order to comply with the requirements of the Patent and Trademark Office, Applicants provisionally elect, *with traverse*, the polymeric membrane species sulfone, and the polymeric support species polyolefin. Claims 1-7, 9, and 11-20 are generic to (i.e., encompass) the elected species. However, Applicants respectfully submit that the claims of all of the species should be considered together in the examination of the present application.

DISCUSSION

Generic claim 1 recites an analysis device comprising a microporous membrane integrally bonded to a non-porous injection molded polymeric support. The alleged species of membranes have a common structure related to their function of being suitable for use in analyzing biomolecules and for being integrally bound to a non-porous injection molded polymeric support. The alleged species of polymeric support have a common structure of being injection moldable and being suitable for integrally bonding to a microporous membrane. Thus, any search and consideration of any of the alleged species will likely overlap and encompass that for the other alleged species. Accordingly, the searches for these alleged species cannot in any way be said to be completely "distinct" or "independent." This does not mean that the claims necessarily stand or fall together, but the overlapping nature of the searches remains and mitigates against a restriction requirement.

As Section 803 of the MPEP explains, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (i) the inventions must be independent

or distinct as claimed, and (ii) there must be a serious burden on the Examiner if restriction is not required. Consequently, as set forth in MPEP 803:

If the search and examination of all of the claims in an application can be made without serious burden, the Examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

This rule applies to a requirement for election of species, as clarified in MPEP Section 802.02, wherein the term “restriction” includes election of species.

The restriction requirement is improper because the Examiner has not shown that a search and examination of the entire application would, indeed, cause a *serious* burden, as required by Section 803 of the MPEP for proper restriction.

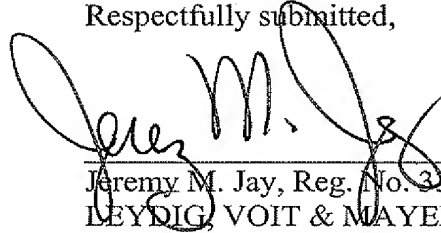
With regard to the requirement for election of species, even if related species are shown to be distinct under the criteria of MPEP 806.05 (c) - 806.06, “the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required . . . [and] must show by appropriate explanation one of the following: (1) separate classification thereof . . . (2) a separate status in the art when they are classifiable together . . . (3) a different field of search.” MPEP 808.02. Here, the Office has failed to show by appropriate explanation any separate classification, separate status in the art when classifiable together, or a different field of search for the claimed subject matter. “Where . . . the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions.” MPEP 808.02.

In any event, Applicants understand that, consistent with an election of species requirement, other species will be considered within a generic claim encompassing the elected species upon an indication of allowable subject matter with respect to the generic claim.

Conclusion

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeremy M. Jay", is written over a horizontal line.

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